***Property and Planning Law in England: facilitating and countering gentrification*[1]**

"The rent of land, it may be thought, is frequently no more than a reasonable profit or interest for the stock laid out by the landlord upon its improvement… When the lease comes to be renewed, however, the landlord commonly demands the same augmentation of rent as if they had been all made by his own." Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, Book 1, Chapter 11, Of the Rent of Land, 1776, 02.

"… every letting agent should spare a kind thought for the memory of Margaret Thatcher - they owe her their livelihood." Martin & Co (2013)

(1) Introduction

At the heart of gentrification is change. This includes the alteration of physical buildings; the emergence of new bars; the loss of established shops or community and social centres. It entails alterations in types of people who live in a neighbourhood, sometimes understood in terms of class or race and ethnicity, as well as in terms of appetites, preferences and social practices. Gentrification includes shifts in transportation systems, the introduction of private buses or cycling lanes. Gentrified locations are perceived as "improved", and, perhaps "less authentic". As Glass famously wrote: "[o]nce this process of "gentrification" starts in a district it goes on rapidly until all or most of the original working class occupiers are displaced and the social character of the district is changed" (Glass, 1964 (1989), 139). And as Smith noted thirty years later: "Gentrification is no longer about a narrow and quixotic oddity in the housing market but has become the leading residential edge of a much larger endeavour: the class remake of the central urban landscape" (Smith, 1996, 39). Gentrification is about place and networks (of people, capital and cultures) and the relationships between the two.

The causes of these changes are, of course, contested (production, consumption or – probably – both [Lees et al, 2008]). Gentrification is produced by private actors but often in collaboration with public-private partnerships facilitating private development on public land both in residential contexts (including the "regeneration" of council estates or retail-led urban regeneration). Networked effects, including tourism, university expansion, use of sexually orientated businesses or changes in the night-time economy, all bring "outsiders" into gentrifying areas. There are continued arguments about whether these changes are

[1] This draft chapter has benefitted greatly from insightful comments by Loretta Lees, David Cowan and Ed Burtonshaw-Gunn.

positive, improving urban landscapes and local cultural offers, or negative, displacing long-standing residents in favour of wealthier, more articulate, privileged incomers.

All of these aspects of gentrification are legally co-produced. In particular, gentrification is produced by planning and property laws, specific to each jurisdiction, coupled with practices, implementation and priorities of landowners. Gentrification decisions are co-produced by legal geography – the interaction of the social, the spatial and the legal (Blomley 2004, Bennett and Layard, 2016). This is often observable in case studies, tracking change (including, Blomley 2004, Hodkinson and Essen, 2015; Hubbard et al, 2009) as well as in the interaction of historical legacies, "ghost jurisdictions" (Valverde, 2012; Freeman, 2017). Each legal framework, however, is jurisdiction-specific.

This chapter analyses both English residential and commercial legal provisions, which do not apply everywhere within the United Kingdom, let alone beyond. However, in explaining how gentrification can be facilitated by property and planning rules in England, we can identify where other researchers should look for legal rules and practices, overlaps and differences. Who owns property? What is the nature of that ownership (freehold, leasehold or a licence?) Is there security of tenure (can tenants – whether commercial or residential – choose to stay as long as they like?)? Are there restrictions on how or when rents can be raised? In new housing developments, who decides how much of the accommodation will be affordable (and what does affordable mean?). These questions and legal details matter in gentrification studies. The more international collaborative projects investigate these questions, the better. With more legally inflected gentrification scholarship, we can understand how doctrinal provisions and legal practices facilitate change, as well as how jurisdictions might learn from each other to develop alternative provisions that could inhibit or slow down unwanted change.

(1) Residential Property

Much has been written on residential displacement in gentrification including the vexed discussions of production and consumption and who or what gentrifiers are (Lees et al, 2008). One of the key markers of early gentrification by new residents in neighbourhoods has been the switch between leasehold and freehold, producing a teneurial transformation (Lees, 1994). As Glass described it in *Aspects of Change*: "One by one, many of the working-class quarters of London have been invaded by the middle classes – upper and lower. Shabby, modest mews and cottages – two rooms up and two down – have been taken over, when their leases have expired, and have become elegant expensive residences" (1989, 138). Tenants were replaced by owner occupiers in 1960s London and if, as Slater (2006)

argues, we should focus on displacement "from below", one way to do this is to understand how existing residents are evicted and how new residents are able to move into the locality in their place. Blomley's (2004) study of gentrification in Vancouver, for example, begins with the example of the Hotel California, where low income renters were evicted to make way for a more profitable hotel.

To explain how similar evictions, and a lack of security of tenure, exist in England as well, it is important to understand the distinction between freehold and leasehold property that is enshrined into English land law (section 1 of the Law of Property Act, 1925). Since 1925, the historically complex legal systems for governing property use and entitlement in England have been hugely simplified. As a result, while there are sophisticated debates about what property "is" or should be (a bundle of rights, a numerus clausus (an irreducible core), informative, progressive or facilitative (for an overview, see Baron, 2010, Davies, 2007)), the legal position about what rights of land law consist of in England is clearly prescribed. Landownership is either freehold or leasehold (there is no native title in England). The estate is not allodial (it does not consist of the soil itself); instead it is a metaphor for time (Gray and Gray, 2003). A freehold estate has no time limit. A leasehold estate is ownership of land with a time limit and it is subject to such conditions as the freeholder may impose in the lease (as well as statutory and common law provisions). While critics have argued that property should be different – encompassing "a relational web of obligations, connections" (Blomley, 1997, 293) – the legally enshrined, dominant conception of property in England has remained largely immutable to such normative concerns.

While this legislative distinction between freehold and leasehold broadly explains the difference between owners and renters, there is no time limit to a lease in England and leases of up to 999 years are not uncommon and are often assumed to be equivalent to freehold (even though legally this is not the case). In England there is no equivalent to Australian strata title or Canadian condominiums and while "commonhold" property is legally provided for (Commonhold and Leasehold Reform Act, 2002), this more collaborative property form has so far not taken off. Instead, both freeholders and long leaseholders are presumed to be owners of their estate, with similar powers to exclude. However, even with long leases, if no action is taken and no premium paid, the land "reverts" to the freeholder at the end of the leaseholders' term (see generally, Gray and Gray, 2011, Cowan, 2011).

These two legal devices – freehold and leasehold – provide extraordinary security for one landowner (the freeholder) and possible vulnerability for another (the leaseholder), particularly in the case of private sector short leases (also known as tenancies). This vulnerability is of course a political choice. Jurisdictions where rent stabilisation and security

of tenure is possible (notably in Germany, Austria and in cities including New York and Berlin) have made different legal and political choices (for Germany, see Urban, 2015 and, for a critique, see Deschermeier et al, 2016). These distinctive legal frameworks mean that a "German lease" is quite different from an "English lease". Similarly, a "social lease" in England is quite different from an assured shorthold tenancy (the default in the private sector) as this chapter will explain. Of course, an English landowner may agree a low rent with security of tenure with a tenant but there is no legal requirement that they do so. Similarly, rental terms are through practice – not legislation – generally for one year. In the absence of any "ethical landlordism", legally implemented, political choices to regulate landlords lightly in England apply to leases. These rules are one reason for the housing market we have today.

Beginning then with private tenants – the most vulnerable residents – we need to turn to the 1988 Housing Act. This marked a turning point in English housing law for tenants in the private sector and it is the reason that Margaret Thatcher is thanked, on behalf of estate agents, at the head of the chapter. In particular, the 1988 Housing Act made two crucial alterations. First, it effectively abolished rent control for all new tenants. Broadly, rent control had been in place until 1965, while rent regulation existed from 1965 to 1988. From now on tenants would have to pay the market rent. If tenants could not afford this open market rent, they could apply for housing benefit to subsidise their occupation so that the landlord received the full market rent if landlords would rent to people in receipt of benefit (no DSS signs in windows or in instructions to letting agents became common devices) (see generally, Cowan 2011, White and Lees, 2015). These costs are extraordinarily high. In 2014-15, around £27 billion was spent on housing benefit (ONS, 2016), with a broadly even split between local authority, housing association and private landlords receiving around 25%, 38% and 37% respectively (House of Commons Library, 2016a).

Second, the 1988 Act changed the rules on security of tenure so that landlords could grant either assured or assured shorthold tenancies. The assured shorthold tenancy (ASTs) became incredibly popular, and indeed the legal default in 1997 (after changes introduced by the 1996 Housing Act). An assured shorthold tenancy must be for a minimum of six months but after that time, the landlord can recover the property at the end of the term (conventionally, through estate agent and landlord practice, a year, although there is no legal maximum). The landlord can also recover the property for a variety of other grounds, including non-payment of rent for two months (Schedule 2, Housing Act 1988 as amended). Any tenancies from before the date the 1988 Act came into force (in 1989) continued but all new tenants (unless they were on very low or very high rents or lived with their landlord), had far more precarious tenancies with the introduction of assured shortholds. While in 2014, the Government issued a model tenancy agreement with a three-year term, they

noted that “there is no legal requirement to use this particular agreement” (DCLG, 2014, 5). Similarly, in the 2017 Housing White Paper, the Government have proposed to “make the private rented sector more family-friendly by taking steps to promote longer tenancies on new build rental homes” (DCLG, 2017a, para 4.35) but there is nothing legally binding here.

These two changes: a lack of restrictions on rent and almost no security of tenure have been crucial to processes of gentrification in England. By far the most common private sector tenancy type today is an assured shorthold and in England in 2015-16 the private rented sector accounted for 4.5 million or 20% of households. This was up from approximately 10% of households throughout the 1980s and 1990s with the sector doubling in size from around 2002 and continuing to grow (DCLG, 2017b).

This matters for gentrification since, with no security of tenure for renters, and with no ability to “remov[e] oneself from the vagaries of the private real estate market” (DeVerteuil, 2015), private tenants are at the mercy of landlords’ decisions at the end of the lease. The quality of these living spaces is also often poor. The English Housing Survey found 28% of privately rented homes were “non-decent” in 2015-6, far more than socially rented or owner occupied homes (DCLG, 2017b). And even when legal protections are enshrined (for example, the protections against retaliatory eviction in the 2015 Retaliatory Eviction and Deregulation Act), they are difficult to implement given the power dynamic between landlord and tenant. Specifically, in a gentrification context, it means that private sector tenants cannot resist eviction for very long if higher payers and more desirable tenants (however perceived) can be found. Recent research also indicates that it is, once again, increasingly widespread for landlords to refuse to let to tenants in receipt of housing benefit (which subsidises their rent) and that this is unlikely to amount to direct discrimination, since income and employment status are not protected characteristics under the Equality Act 2010 (House of Commons Library, 2016b).

This rental turnover is a new form of gentrification in England, since new tenants are quite different from first wave middle-class gentrifiers, buying the freeholds of their properties and becoming (landed) gentry (acquiring “some version of the aristocratic country house” (Glass, 1989, 153)). Freeholders (and long leaseholders) have some protection against neighbourhood change. Private renters do not (however much they are paying). While in the United States, homeowners may pay increased property taxes in gentrified neighbourhoods (Smith and Williams, 2013) the opposite is true in England. Here, as council tax is based on local need, higher taxes are collected in poorer and older localities so that although council tax is constructed to be financially progressive, it is spatially regressive. For example, average Band D council tax in Westminster in central London is £680 a year, while in the North East of England the average is 1636 a year (HofC, 2016c). And even in the

United States, with property taxes, there is evidence that gentrification hurts renters far more than homeowners (Martin and Beck, 2016).

The question then, is whether this rental insecurity, which is highlighted in gentrification studies, is particularly unusual. An alternative suggestion is that these inequities, as we see them, are a standard incident of the lease. This inability to stay put is an expression of housing precarity more generally, particularly in the private sector. The Housing Act 1988 applies to all locations. Rental "churn" affects many locations, gentrifying or not, as Matthew Desmond's (2016) *Evicted*, set in the United States, so brilliantly illustrates. Indeed there is some suggestion that residential (leasehold) displacement is not exacerbated in gentrifying neighbourhoods (for American analyses, see Freeman 2005, 2015 and Kleinhans and Kearns, 2013). Whether or not gentrification causes residential displacement, it is clear that rental insecurity is an ongoing concern, in many, many locations, frequently invisible to those in more secure housing settings.

In order to stop residential displacement whether as a consequence of gentrification or more generally, we might do one of two things. One option is to address the instruments that facilitate it, particularly the lease as constructed under the 1988 Housing Act. This would mean arguing for the introduction of some form of rent stabilisation in the private sector, so that rents are not determined by market forces alone. While public opinion in England appears increasingly to favour some form of rent control (Survation, 2014), Labour leaders, including Ed Milliband and Jeremy Corbyn, have been summarily critiqued for such suggestions ("with references to Venezuelan-style rent controls" quickly taken up by the press (The Telegraph, 2014). Rent regulation is not on the political agenda in England.

Some local authorities who have experienced resident change have attempted to go alone. Camden, in London, for example, commissioned research on rent stabilisation in 2014 and argued that "Camden should positively enable longer-term tenancies with index-linked rent increases, voluntarily agreed by landlord and tenant, while at the same time improving transparency and contractual enforcement for both landlords and tenants across the sector" (Scanlon and Whitehead, 2014, 6). However, unlike in Berlin or New York were cities have constitutional powers to introduce restrictions on the rental market, in England rents are regulated nationally and local authorities do not have the constitutional powers to create their own land law rules. There is no constitutional basis for localised rent regulation.

Nevertheless, this idea of voluntary "ethical renting" within the private sector can build on the understanding that leases are instruments that are only very lightly regulated and that as contracts as well as estates in land, landlords and tenants can agree their own terms. In the vast majority of private rental sector leases this will be a standard 12-month lease on

relatively standard forms provided (for a fee) by estate agents or conveyancing solicitors. It may be possible to change the motivations of landlords (generally by changing who the landlords are) and landlords can of course introduce use the 3 year model tenancy for a "reasonable" rent. This is their choice. A difference in practice is most obvious in the leases granted by (social) housing associations or local authorities (for council tenants) considered below. Any private landlord could also, however, grant a progressive (secure and for low rent) lease (although often this would mean that letting agent practices would have to become "ethical" as well).

This is a particular possibility if community groups can buy property when prices are still (relatively) low. One such example is in Hastings, where Rock Neighbourhood Ventures (WRNV) have bought Rock House in the White Rock area of Hastings to develop it as a 'co-habitation' space – co-housing, co-working, collaborative creative space. This is an explicit move: as Jess Steele, Director of White Rock Neighbourhood Ventures, asks on the website: "How can we capture the benefits of gentrification and control the downsides?" (Steele, 2014). Greater use of ethical leases, cooperative ventures or community land trusts, all offer the ability to provide long term housing security and so inhibit change and housing precarity (in DeVerteuil's (2015) term they can provide "spatial resilience"). These are further tools, if, and this is a big if, the difficulties with land acquisition, finance and assumptions about expertise can be resolved (Field and Layard, 2016). If ownership can change to more benign freeholders, given a landowner's ability to set the agenda for the site, institutional resistance to gentrification can then take place.

What then of social housing? For local authority and housing association homes, different rules and practices apply. Although the leasehold mechanism is essentially the same (created still under s1 of the 1925 legislation), there are different forms of tenancies, including secure, introductory or flexible for local authority housing and secure, assured or starter tenancies in housing associations. There has been enormous political interference and new legislation in this field, so that social housing is for many seen as an "ambulance service" rather than providing secure, affordable housing for life (Fitzpatrick and Pawson, 2012). The greatest change has been the shift from council housing to housing association provision through the "arms-length management" reforms, begun in the 1980s and the creation of the social housing sector where different rules can apply (Cowan and McDermont, 2006). This has been a field of extraordinary change, most recently in the 2016 Housing and Planning Act. Social landlords are continually at odds – both with the Government and with each other – over "who and what English social housing is for" (Fitzpatrick and Watts, 2016). Where they exist, however, secure tenancies remain by far the most protective tenancies and also generally include the right to buy (with generous

discounts, facilitated particularly by Thatcher's 1980 Housing Act for tenants of local authorities and the Housing and Planning Act 2016 for tenants of Housing Associations). The most recent estimates, in 2015-16, found that 17% (3.9 million) of households lived in the social rented sector, compared with 20% (4.5 million) of households who were renting privately (DCLG, 2017b).

These numbers are, however, going down, largely as a consequence of the right to buy, reducing from 31% of households in the social sector in 1980 to 19% in 2000 (DCLG, 2016a). The primary reason for this reduction lies in right to buy discounts, the liberalisation of mortgage lending in the 1980s and introduction of "buy-to-let" mortgages in the late 1990s (Crook and Kemp, 2011). With these developments, many private landlords bought council housing and former tenants often made substantial windfall profits. Estimates now suggest that between 30-40% of previously council owned properties are rented by private landlords (Murie 2016, 107) with many receiving housing benefit to subsidise the rent to market levels. This has significantly benefitted estate agents, as Martin & Co (2016) point out in their tribute to Margaret Thatcher: "All of this ex-council stock is now traded to the benefit of estate agents fees". In practice, the right to buy has led to less stability and more rental churn, given private rental rules and practices, again facilitating gentrification. The English experience here echoes that in other jurisdictions as well, for example Sweden (Andersson and Turner, 2014)).

Moreover, even within the much more stable and protective social housing sector that remains, there has been a growing concern in recent years about residential insecurity. Here "state-induced" or "state produced" gentrification (Lees et al, 2008, Watt, 2009, Hodkinson and Essen, 2015), has seen the regeneration of estates particularly in London. Often framed in the policy context of "social mix" (Bridge et al, 2012), these initiatives have produced significant change both in material surroundings and in the identity of residents. For some time these sites of social housing – council owned housing estates – were barriers to gentrification (Butler and Robson, 2003). However, with limited local authority budgets and fantastically valuable urban freeholds, times have changed.

One notable instance of state-induced gentrification has been at the Heygate Estate in London (Lees et al, 2013, Lees, 2014a; Lees and Ferreri, 2016). Here, in 2010, the Labour run Southwark Council sold the 25 acre Heygate estate, for £50 million to Australian developers, Lendlease. Although overage provisions - where payments may become payable by Lendlease to Southwark, once particular profit margins have been met - were reportedly included in the agreement, this is only for the sale of the units. The site, first by land transfer to Lendlease, then by sale to private owners or landlords, has moved from public to private,

and – for tenants - from social to private renting so that rent limits and extended security of tenure will no longer apply. The freedom of the Local Authority landlord to sell or regenerate as they see fit was illustrated by Southwark's initial decision to sell the land on which the Aylesbury Estate (see Lees, 2014b). The council justified this by arguing that the decision arose from concerns about "commercial, legal and procurement risks" in using the Homes and Communities Agency's Developer Panel (Dentons, 2010). Although it has not yet been sold, the language illustrates that this was – and remains - a choice for Southwark to make (and one upheld by central Government) as the freehold owner of land, rather than redeveloping the site themselves.

These "regenerated" council housing estates have become sites of resistance, particularly when they are also sites of diversity (Lees, 2014a; Lees and Ferreri, 2016). Activists have recourse to public law remedies that are not available to private renters as the landlords are public bodies. Extra procedural requirements apply, including access to information under the Freedom of Information Act 2000 as well as the Environmental Information Regulations 2004, which (broadly) apply to public authorities rather than private bodies. The greatest potential for resistance lies – perhaps ironically – in those residents on council estates who have either exercised their right to buy their property or have bought on from a previous council tenant who exercised their right to buy. For these residents, human rights (notably Article 8, the right to family life and Article 1, Protocol 1 of the 1950 European Convention of Human Rights) can be raised to require either procedural or substantive changes by landowners. As the redevelopment of the Heygate estate illustrates, even if individual estates cannot be saved, activism creates vital spaces for discussion.

While often legal resistance does little more than delay the process, it can create discursive space to bring gentrification arguments out into the open. On the Aylesbury estate, for example, the decision to confirm the compulsory purchase of the long leaseholders and freeholders (under right to buy) was not confirmed by either the Inspector or the Secretary of State in 2016. Their justification for refusing the compulsory purchase order of the long leasehold properties included possible breaches of human rights, a failure to carry out an Equality Impact Assessment as well as the Public Sector Equality Duty (under section 149 of the Equality Act 2010). The decision found that particularly elderly and black and ethnic minority residents might find their cultural life "likely to be disproportionately affected" by the Compulsory purchase order and that this could lead to "dislocation from their cultural heritage for some residents" (paras 21 and 29, DCLG, 2016b). This decision was undoubtedly influenced by broader decisions, including that about the Heygate.

This refusal to confirm the compulsory purchase of the long leaseholders' homes was a victory for Aylesbury activists (Lees, 2016 (Conversation)). It also followed more encouraging litigation in Shepherd's Bush where a compulsory purchase order of a market was opposed by tenants (*Horada v Sec of State*, [2016] EWCA Civ 169). In creating discursive spaces, in delaying the processes, activist litigation can be felt to be having an effect. At the time of writing – early 2017 - a judicial review of the Secretary of State's refusal to confirm the compulsory purchase orders at the Aylesbury Estate, brought by Southwark, the local authority wanting to redevelop, is pending. When it is heard, the court can decide to uphold the Secretary of State's refusal or, alternatively require the compulsory purchase order to be made. Litigation has brought delay to the developers and *could* act as an incentive for Southwark to negotiate a better deal with the remaining leaseholders. Despite the difficulties in bringing any public-interest litigation in England, often as a consequence of costs and the limited remit of judicial review, these interventions matter even if ultimately they cannot limit the rights of landowners to do as they wish with the land. They create discursive spaces.

For while such legal activism is unlikely to stop some regeneration on these individual sites, the growing concern has led to governmental oversight and identification of "best practice" (as in the 2016 *Estate Regeneration National Strategy*) (DCLG, 2016c). Such initiatives could lead to other local authorities thinking long and hard about simple land transfer models, where they sell land to (potentially) the highest bidder. Activism – especially when it involves costly legal bills – can create discursive spaces for discussion (what *moral* right did the Labour leader of Southwark Council to strike the deal with Lendlease in respect of the Heygate?) as well as preventing some of the reproduction of building practices (which have been so evident in the retail context (Layard, 2010). Property practices – drawing on standard form contracts and assumptions about (confidential) commerciality - can be disrupted through such interruptions.

The fight for English council estates is so important then, because being a resident on a publicly owned piece of land, brings expectations (and some - albeit limited - rights) in respect of consultation, equality and human rights. These rights only exist where the landowner is a public authority. This is true both for long leaseholders who have exercised their right to buy (as on the Aylesbury Estate) as for short leaseholders (in the Cressingham Garden litigation, where one case was won (*R. (on the application of Bokrosova) v Lambeth LBC* (2015) EWHC 3386) and one lost (*Plant, R (on the application of) v Lambeth London Borough Council* [2016] EWHC 3324 (Admin)). Public law objectives on consultation are (in the words of the Supreme Court) "to ensure not merely procedural fairness in the treatment of persons whose legally protected interests may be adversely affected, but also

to ensure public participation in the local authority's decision-making process" (*R (on the application of Moseley v London Borough of Haringey*, [2014] UKSC 56, para 38). These legal disputes are largely procedural as a consequence of the limitations of judicial review where courts cannot substitute their substantive judgment for that of the decision-makers. Nevertheless, the rights create discursive spaces for resistance and change, enabling discussion around gentrification to take place in ways that do not exist in private sector housing.

New builds and affordable housing

What then of new developments and new affordable housing? Could these be used to counter gentrification? Certainly, the construction of affordable housing – often a bulwark of resistance to gentrification– has fallen dramatically in 2016 to 32,100 homes in England. There has been a reduction of 52% from 2015/16, bringing us back to levels last seen in 1991/1992 (DLCG, 2016d). This fall is despite an overall rise of 6% in house building completions this year, with 139,030 houses built (DCLG, 2016d) as well as an extraordinary release (mostly sale) of public land for housebuilding. One reason for this decline is that 84% of new housing is currently provided by the private sector (with 14% by housing associations and only 1% by local authorities, DCLG, 2016e). As in other jurisdictions (see Australia, for example, Davison et al, 2016) planning is a central process through which new affordable homes are created. Yet in England, while private developers can be made subject to s106 obligations to provide affordable housing when granted planning permission, these are declining and even when they are built, are not necessarily affordable, given revised rules on what "affordable" means. For instance, over 12,000 affordable homes were built via s106 obligations in 2015-16, the vast majority (about 8,500) were for affordable rent (80% of market prices); affordable home ownership or shared ownership. Only around 3,000 units were built via s106 for social rent via in the entire country, even though (DCLG, 2016d).

One reason affordable homes are not being built is that while planning permission for new developments must still be obtained (under ss 55 and 57 of the TCPA 1990), and while this must be in accordance with the development plan (s 70(2) of the TCPA), there is a particularly controversial change in paragraph 14 of the National Planning Policy Framework (NPPF) (DCLG, 2012a). This introduces a presumption in favour of sustainable development as well as paragraphs 47 and 49, which use five-year supplies of housing as mechanisms to either decide in line with, or effectively override, the local plan (this is a matter of extraordinary legal controversy at the moment, awaiting the decision of the Supreme Court in the *Hopkins Homes* litigation). This extent of legal technicality here, highlights the irony that the NPPF was introduced to simplify and reduce red tape. It came about when the

government accepted the critique that "planning is the problem", preventing the development of new homes (even though the Local Government Association identified 475,000 homes in England which have been given planning permission but which are yet to be built (LGA, 2016)).

Of course, we need more housing, and new developments can be welcome. However, the difficulty here, and the facilitation of gentrification, comes from the "dark art" of viability, which was also introduced in the 2012 NPPF. This requires that in order to "ensure viability, the costs of any requirements likely to be applied to development, such as requirements for affordable housing, standards, infrastructure contributions or other requirements should, when taking account of the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable" (NPPF, para 173). What this has meant in practice is that when developers apply for planning permission for a new housing development, they are now less likely to enter into a s106 agreement in order to obtain their planning consent. This is both facilitated (via the presumption in paragraph 14 of the NPPF) and undercut by viability. For rather than pay for or provide new affordable housing as their "planning obligation", developers can, often by relying on consultant surveyors, argue that if affordable housing is required it will make the development "unviable". The local authority often has little option but to grant planning permission even if no, or little, affordable housing is provided.

Sometimes a local authority might argue vehemently against the developers' calculations (which are often based on assumptions as to profitability). The cost of any planning appeal, or subsequent litigation, particularly at a time of severe local authority budget cuts in response to austerity politics, does, however, limit the space for dissent. And yet, there are some local authorities that are using the legal mechanisms at their disposal to resist. The London Borough of Islington has been particularly effective here. In its recent Supplementary Planning Document, Islington has set out its expectations on viability and appraisals, with a particular commitment to transparency, stating that: "The council considers that information submitted as a part of, and in support of a viability assessment should be treated transparently and be available for wider scrutiny. In submitting information, applicants do so in the knowledge that this will be made publically available alongside other application documents" (2016, 46). Alongside recent decisions assisting local authorities (including *Greenwich RLBC v Information Commissioner*, 2015 EA/2014/0122), this marks an effort by progressive public actors to ensure that at the very least the information on which to assess viability and argue for more affordable housing is in

the public domain. These are occasional bright spots in the extraordinary facilitation of private sector development producing homes primarily at market prices.

What all this means for gentrification is that new developments can be proposed, often regenerating mixed use, industrial or even former residential sites, but planning officers and local councillors can impose increasingly fewer requirements to provide affordable housing. Legal provisions on planning, particularly since the introduction of the 2012 NPPF, have facilitated regeneration and housebuilding. However, with no mechanisms in place to control rents or prices, poorer residents are often excluded. When this is coupled with limits on welfare payments, and the introduction of universal benefit, it can lead to widespread social reorganisation, largely through housing (Hamnett, 2014) and framings of "affordable rent". Even Boris Johnson, then Mayor of London, argued in 2012 that this amounted to "social cleansing" (Lees, 2014a). Apparently neutral, technical provisions can have enormous social and spatial effects.

What then can be done? Are there solutions that can be legally implemented other than a return to more progressive planning ways? The most effective way is to take a more robust approach to viability assessments – limiting profitability – perhaps through the standardised models that are now being proposed for London. The provision of affordable housing through planning obligations (s106 obligations) has declined rapidly as profitability (viability) has become central to decision-making in planning. This can be reformed as some local authorities – notably Islington in North London – are demonstrating (Islington, 2016). London, as a whole, is also investigating how to implement a standardised viability methodology to address these problems (Mayor for London, 2016). The 2017 Housing White Paper (2017a) is, however, notably silent on the need for a standardised viability methodology.

Another way is to change what we require planning permission for, for example short-term lettings. In England planning rules have been "relaxed" to facilitate Airbnb despite the gentrification changes this can bring. Since the 2015 Deregulation Act, owners in London can rent their homes for up to 90 days, removing the requirement in the Greater London Council (General Powers) Act 1973 for planning permission if residential premises were to be used for temporary sleeping accommodation for less than 90 consecutive nights. While there are interventions by landlords, including London local authorities who remain the freeholders for flats purchased as "right to buy", against tenants letting properties through Airbnb (for example, see *Nemcova v Fairfield Rents Ltd* [2016] UKUT 303), this relaxation in planning rules comes at exactly the same time as other cities, including Barcelona, Dublin and Berlin (Novy and Colomb, 2016, for Lisbon, see Gant 2016), have introduced regulations

to restrict short lets. In Dublin, for example, planning permission may now be required with Airbnb is recognised as a potentially commercial practice and a business use of space. Constraints on leases or within regulation can quite easily be introduced, should political actors desire them (Vice, 2016). So far, however, national decision-makers have facilitated Airbnb, leaving it to individual landlords to impose restraints if the properties are held on a lease.

Another suggestion is to enrol materiality. This was illustrated early on in gentrification studies of the "break up" of houses into flats from the 1960s to 1980s in London (Hamnett and Randolph, 1986). If sub-division is possible, gentrification is materially facilitated. If it is not – as for example in some post-Soviet buildings – the physical and financial commodification are more difficult to combine to produce a change of ownership (whether freehold or leasehold). In these instances there are material restraints on gentrification. Of course, these can be overcome by large-scale regeneration projects. This is most evident in the destruction of council estates (including the Heygate and Aylesbury Estates in the Elephant and Castle in London) where the land values are so high that rent gap provides huge incentives for redevelopment (Lees, 2014a,b, Watt and Minton, 2016). In the regeneration of council housing estates an extraordinary amount of attention has been paid to the – apparently – poor design and quality of these estates. In England, materiality has often (for example, at both the Heygate and Aylesbury Estates) been enrolled to argue for gentrification, not against, it. Architects have been criticised for outdated, often 1960s designs, while a lack of property maintenance has led to undesirable living conditions (particularly once decanting processes have been undertaken and only a few leaseholders remain). This lack of care justifies "regeneration" with its physical, social and spatial consequences.

Materiality can however be protected. This is illustrated by Berlin's *Milieuschutz*, which uses legal restrictions to enrol material conditions as a mechanism to resist change (Karow-Kluge and Schmitt 2014, Holm, 2014). In Berlin, there is some anecdotal evidence that landlords are being refused permission to install marble ceilings, second bathrooms or lifts in five storey apartment blocks. Framed as restrictions on taste, these material restrictions, legally implemented, can inhibit building change and so inhibit their market value (for rent or sale), making them more affordable for existing residents. It is plausible that in England, too, conservation, listing or any planning measures might be used to inhibit gentrification. Throughout the 1960s and 1970s, there is widespread evidence that preservation of heritage was used as a pro-gentrification strategy, requiring particular maintenance procedures and costly permissions. Might there be scope to extend listing beyond historically significant sites and aesthetically pleasing fabrics to "landmark" or protect

authentic places as conservation areas today? We know that design is crucial in attracting wealthier residents – and gentrification – whether as a result of conservation restrictions or apartments produced for wealthy international buyers. Material conditions might constitute part of a "right to community" if this can be developed from the decision letter refusing to confirm the compulsory purchase orders on the Aylesbury Estate in 2016. In particular, there is potential here for minority narratives (given equality duties) to find protective legal form (as the Pueblito Paisa dispute, discussed below, illustrates).

One further planning initiative may also offer further hope. Throughout areas of outstanding beauty, including rural and coastal areas, "locals" are being priced out by incomers, notably second homeowners who rarely use properties throughout the year. The effect has been that in Cornwall, the Yorkshire Dales and the Lake District, for example, coastal and rural locations have seen such house price inflation that residents without rental security or children of longstanding residents can no longer afford to own or rent locally. One local response has been to attempt to introduce planning rules that limit the construction of new properties that can be used as second homes. Instead houses are given planning permission only if they are to be used as primary residences (with provision within enforcement made for exceptional circumstances). Long desired, these changes have come through neighbourhood planning initiatives (introduced alongside the Localism Act of 2011). They have also been (in the case of St Ives, in Cornwall) been upheld in court in *R (RLT Built Environment Ltd) v. Cornwall Council* [2016] EWHC 2817 (Admin)).

Neighbourhood planning might then be an ally in resisting gentrification. Certainly, minority perspectives have not always been incorporated in neighbourhood planning and some see the process as backward-looking and nostalgic, raising questions about the "attempts to mobilize the affective and morally charged language of the local" (Tait and Inch 2016, 174). However, there is a localism of hope that engages with differentiated civic capacities within and between communities. Wills (2016, 4) has argued persuasively for optimism, noting the difficulties and yet suggesting that as "the shift towards localist statecraft exposes the limits of our dominant paradigms for thinking about politics and its geography, as well as the weakness of our institutional infrastructure, there is an opportunity to revisit questions about the importance of place". Neighbourhood planning could be use progressively to plan for stable and sustainable communities, that indeed are the aims of many participants.

Legal mechanisms might then be developed to try to protect distinctive places (a further example might be the terroirs that are used as geographic indications to protect food producers, including champagne and prosciutto di Parma (Raustiala and Munzer, 2007). We might imagine ways - by drawing maps and attaching protections as both neighbourhood

planning and geographic indications do – to protect cultural patterns of consumption or local practices as efforts to inhibit gentrification. We could investigate the potential of using provisions analogous to these on second homes to inhibit "buy to leave" of new build residential properties in high value urban areas (or even second homes in the City of London, the authority with by far the highest proportion in England (at 28.5%, compared with Cornwall's 5.4% (Estate Agent Today, 2016). Strikingly, there are no nationally complied figures and – as with "buy to leave" – researchers are heavily reliant on estate agents for information). It might – as with AirBnB regulation in Berlin, Barcelona and New York – involve some neighbourly investigation for enforcement. There may or may not be some distaste for that. As a legal mechanism, however, as these cities have demonstrated, such provisions can be drafted.

Of course, this is not straightforward. Tastes and practices change. Identifying "locals" in restrictive ways (were your parents or your grandparents born here?) is exclusionary. There is a tension within gentrification studies between place and networks (including of immigration and globalisation). At the outset Glass (1964) acknowledged this, writing that London is "too vast, too complex, too contrary and too moody to become entirely familiar" (133). We might, however, think about how to develop such ideas to create legal mechanisms to protect place and existing residents. Or we might adopt everyday acts of resistance from Cornish locals who (allegedly) might put a mackerel through the letterbox of a rarely used second home.

(2) Commercial Property

Some of the most noted signs, or signifiers, of gentrification, are the emergence of hipster bars, artisanal pizza restaurants and estate agents in established – but not necessarily financially thriving – shopping streets. Zukin (2011) has argued that we need to acknowledge "the entrepreneurial role of newcomers who open businesses in the district - art galleries, performance spaces, restaurants, boutiques, and bars - that not only provide spaces of consumption for residents and visitors to develop a lifestyle, but also provide visible opportunities for neighbourhoods to develop a new place identity" (163). Such claims about place identity are not uncontroversial (Slater, 2006) but are facilitated by two legal mechanisms: (1) the construction of commercial leases; and (2) the grant of planning permissions and other licences for change of use. Current rules facilitate change – and so allow gentrification – while new rules might be envisaged to restrict change, better enabling existing retailers and businesses to stay put. While both leases and planning are crucial in commercial gentrification practices, for reasons of space, only leases will be considered here. For it is once again the lack of security of tenure and the decision-making power that

so often remains with the freeholder that becomes the facilitator of change. This chapter will now review how leases operate to facilitate gentrification, contributing to growing debates on retail gentrification, which – as Hubbard (2017, 2) notes – "remains poorly theorized as a form of gentrification".

As a device to enable land ownership and use, leases have been used for hundreds of years, particularly as a mechanism to facilitate mortgage lending and in agricultural contexts, as already discussed, and these will be the focus of this section. For in the English commercial context, long leases are often used for major redevelopment, combined with public leasing of land, including 999 year leases for the construction of the Royal Albert Hall (Kelsey, 2001) as well as for Liverpool Football Club at Anfield in 2006. Long leases for 250 years are also common in retail-led regeneration (Layard, 2010). Such very long leases are close to freehold in respect of term (who knows what a site will look like 250 or 999 years from today?) and the agreements of the lease, even when the freeholder is a public body, are generally confidential. These long leases give extraordinary stability to developers, be they for commercial or philanthropic reasons.

Elsewhere, however, the average length of commercial leases is between 6 and 7 years (BPF, 2015). Start-ups, in particular, will often only be offered a short lease or indeed they may choose one, particularly if the agreement does not have a break clause (giving either the tenant or landlord the ability to serve notice during the term of the lease). While shorter leases give businesses greater flexibility – if the business does not flourish, they will not be contractually obligated to pay rent for a long period – it also means that the rent can be increased more quickly when a new lease is negotiated at the end of the term.

This matters for gentrification since, while a freehold owner can use their property as they wish for as long as they wish, a leaseholder cannot. The ability to end a lease at the end of a fixed term (termination) or to vary its conditions (particularly, how much rent is payable) are part of the contractual relationship between landlord and tenant. At the end of the lease any increase in value – with any improvements made by the tenant, to the land, the property or the neighbourhood – accrue to the landlord. And while a lease is an estate, and so something to be owned within property law, it is also a contract, with terms to be negotiated. Although such negotiations must take place in the shadow of the law, historically the law of England and Wales has largely left the parties free to negotiate the initial form of a commercial lease.

The most contentious aspect of commercial leases has been the amount of rent payable. In England there are no restrictions and market forces determine the level. An initial rent will be agreed between landlord and tenant when a lease is first negotiated. The tenancy

agreement may provide for rent increases or reviews during the term, but if it does not, the initial rent will normally apply for the full length of the tenancy. Rent review clauses can be inserted into commercial leases to provide a mechanism through which the landlord and tenants can agree rises in rent over the course of the tenancy. In times of recession there has been considerable concern about the use of "upwards only" rent review clauses, so that even if the value of the capital property goes down, the rent is still required to go up. This matters because if the parties cannot agree a new rent under a rent review clause, costly arbitration or expert valuation procedures are used to resolve the disagreement. Mary Portas has been especially critical, recommending alternative lease structures for smaller businesses, in particular, including a turnover based rent, which gives "landlords a stake in the success of the tenant's business" (Portas, 2011, 35).

This lack of restrictions on rent mean that security of tenure for commercial tenants is limited. For while the Landlord and Tenant Act 1954 confers a statutory right of renewal on occupying business tenants (s24), a landlord can still seek the end of the lease (s25) if s/he can make out either disrepair, persistent delay in rent, breach of other obligation, offer of alternative accommodation, premises substantially more valuable as a whole, demolition or reconstruction or landlord's own occupation (s30). More significantly still, the 1954 Act does not provide for any degree of rent regulation. Even if a tenant can renew his lease, "the rent is to be that which the holding might reasonably be expected to be let in the open market by a willing lessor and lessee, disregarding the effect of the occupation of the tenant, any goodwill of the business and certain tenant's improvements" (s34).

The effects of these provisions are vividly demonstrated by the experience of the Kaff Bar in Brixton in London, a thriving local business. As Steven Ross, manager of the Kaff Bar explains, after being served with a s25 notice not to renew their short-term lease on the basis of alleged landlord's own occupation: "we finally received some proper dialogue from the other side. This was to now offer us a renewal on our lease. We expected a rise in the rent and were prepared, but not for over treble the amount we are currently paying!!! As you can imagine, we weren't best pleased with this so we have tried to challenge this since and tried to arrange a meeting to discuss terms of negotiation. However, with recent events and news about other properties and the future of Brixton in general I sat down and proceeded to do the sums to see if realistically we could stay. The short answer again is, no!" (quoted in Urban, 2015). The use of these legal provisions, and the decisions of the landlord (the freeholder), led to the end of this popular Brixton bar.

In gentrifying neighbourhoods, a lack of security of tenure coupled with rents pinned to the open market facilitates change. It produces steep rent hikes with no protection for existing tenants when their lease term expires or the landlord decides to evict under the terms of

the lease. This is as true in Shoreditch in London as in Harlem in New York City. The tenant may well have put in effort to bring about positive transformations yet they will not share in the benefits at the end of any lease. For, as Adam Smith's quotation at the start of this chapter makes clear, it is the freeholder – the landlord – who benefits in increases in value in the land. And so in 2016, Dip & Flip, selling "gourmet burgers and hot meat sandwiches topped with gravy in a simple-yet-stylish dining room" opened up in the Kaff Bar's old site, presumably (because these facts are commercially confidential) paying a higher rent.

How could we reform the law on commercial leases to inhibit gentrification? The Kaff Bar's story is one that is told over and again in gentrifying neighbourhoods. Local shops and businesses are displaced, replaced with new users, be they commercial or residential, producing higher profits to landlords (either in rents or, if the landlord "cashes in" on rising land values, in capital receipts). While residential rent control is regularly discussed, commercial rent control is much less common. It was briefly introduced in Albany, New York in 1948, existed in New York City (with measures for decontrol) from 1945-1963 and most comprehensively was introduced in Elmwood in Berkeley, California in 1982, providing commercial rent stabilisation for a small shopping district of eighty-four stores (Keating, 1985). Zukin identifies the expiry of "rent-control-type laws" as one reason for the rise of "loft living" in New York City after the 1960s (1989, 52).

In England, however, there are no calls for commercial rent control. The 1954 Act gives security of tenure but no guarantees as to rent. In the absence of any prospective changes to commercial leases, another alternative is to work with landlords for positive change. Alive to the difficulties, the Royal Institute of Chartered Surveyors has developed a specimen lease for five years with no rent review (RICS, 2016). There is a lease code, setting out desirable provisions from the government's point of view, which landlords *may* follow. Very little of this has been legally transcribed and leases remain instruments that reflect the power dynamics (or market conditions, if you prefer) between landlord and tenant. Freeholders may often be non-resident. "Shell" companies are created to be the freehold owners of land, sometimes registered abroad for tax-reasons, making it difficult for individual tenants to deal with landlords directly, engaging instead with managing agents.

Again there is a role here for "ethical landlordism", in the use of meanwhile leases, another legal mechanism to facilitate change. Lauded in DCLG's 2009 Report *Looking After Our Town Centres* and widely heralded as productive for high streets, entrepreneurs and charities as well as for landlords (minimising the payment of business rates and utilities while properties are empty, having the security of active occupation and showcasing possible future use) meanwhile leases are short-term by design. They facilitate (productive) change. Yet while the recent governments have worked collaboratively to develop guidance and a specimen

lease for pop up shops (DCLG, 2012b), in practice, landlords require legal arrangements to be overseen and checked by a solicitor and/or surveyor (if alterations are to be made) of the landlords' choice and at the pop up tenants' cost. Although charities are advantaged here, as they can occupy otherwise empty premises and claim rate relief (they pay only 20%) often in exchange for "tax-deductible donations" from landlords, for non-charitable entrepreneurs, turnover can be fast, with the costs almost always borne primarily by the tenant.

Encouraging philanthropic commercial landlordism for meanwhile or standard commercial leases might then be an avenue for productive resistance to gentrification whilst still facilitating change. If we can do little to change the law, we can change legal and commercial practice. Examples of good practice using leases without transferring the freehold for community benefit abound (CABE, 2008, 2010, DCLG 2012b). Such developments can be perceived as gentrification but if sensitively implemented, they can provide genuine local benefits. However, in recent years, the impacts of austerity politics and the perceived need for local authorities to sell "spare" sites to balance their books, coupled with a growing emphasis on using public land "efficiently" (HM Treasury, 2013), has reduced opportunities for meaningful, community-led engagement with local authority landowners who often engaged productively in these schemes. We may need to look to greater community and private philanthropic landlordism in future, changing cultures rather than legal provisions, if we are to create brakes to slow down the constant change and rent increases facilitated by commercial leases. That of course requires access to land, which is of course becoming ever more expensive.

One last way in which legal rules on commercial property can facilitate gentrification is to note both the legal reproduction (the same agreements and the same legal mechanisms) are accompanied by materials and designs, which are also reproduced from site to site. As Anna Minton has noted: "Take the Westfield shopping centre in Stratford City – you don't even need to know you're in Stratford. You've come by tube or you've come straight in on the motorway, which has taken you into the car park. You can go shopping. But if you make the effort to look across the road from the top of the entrance staircase, and you look down over the gyratory system, you've got this run-down 1970s mall, which is where local people go" (quoted in Imrie and Lees, 2014, 35).

Gentrification is a profoundly material practice. Where once it consisted of the introduction of "a cultural sensibility and refinement that transcended the post-war suburban ethos of conformity and kitsch" (Zukin, 1993, 192) or quiche lorraines and Habitat furniture (Moran, 2007), it now takes physical form through architectural practices, using repeated consignments of materials. There is an emphasis on "authenticity" (for microbreweries or

local bread, see Hubbard 2017) as well as large scale reproduction of new shopping centres that are materially reproduced with very little connection to place (for examples, see Hammersons 2016 Annual Report, with centres in England, expanding into France and Spain as well). Both the reproduced and the "authentic" can be understood as gentrification. Similarly, as Smith and Williams (2013) note, the residential and the commercial are frequently interlinked in major construction projects, in the redevelopment of urban waterfronts for example, industrial rezoning or the rise of hotel, office or retail districts. These large projects could incorporate cultural and place-based planning restraints within the redevelopments but generally do not.

Such cultural and material choices are profoundly positional. With individual (though networked), early, gentrifiers these choices were noticeable but had little legal force. This became quite different when urban and historic conservation initiatives began to focus on the fabric of buildings and their curtilages. Conservation areas were introduced in 1967, with early gentrifiers often using their mechanisms to inhibit change or require costly renovation practices (Lees et al, 2008). These days, conservation areas are designated areas of special architectural or historic interest "the character or appearance of which it is desirable to preserve or enhance" (ss 69(1) and (2) of the Planning (Listed Buildings and Conservation Areas) Act 1990). The regulatory provisions can see off change, particularly in terms of the built fabric of a place. Yet they are invariably focused on historical artefacts and sites and reflect the conservation preferences of majority cultures.

This is also true of listed buildings. This began in England, post-war, in 1947 building on the Victorians' 1882 Ancient Monuments Protection Act. The system acknowledged a focus on the historic built environment and today buildings can be listed, and so protected, if they have architectural or historic interest that is longstanding (today these criteria are in s1(3) of the Planning (Listed Buildings and Conservation Areas) Act 1990). If buildings are not aesthetically pleasing, they might still be listed, but only if they are "important for reasons of technological innovation, or as illustrating particular aspects of social or economic history" (DCMS, 2010, 4) not because of their use today. As this illustrates, interpretations of which cultures we should protect and admire are inevitably subjective, privileging one set of cultural practices and preferences over those of others. Shaw is explicit about this, in writing of Sydney, that: "as desires for heritage develop and consolidate with gentrification, and become more inclusive of difference, migrant and indigenous heritages continue to remain outside the heritage orbit" (2005, 59).

The difficulties in protecting minority heritage has been achingly clear in the battle to maintain Pueblito Paisa, an indoor market in Seven Sisters in London (at Wards Corner). This

provides a spatial and social focus for Latin American cultures in its shops, cafes, restaurants, and barbers shops, on a site where 64% of the 36 units are occupied by traders either from Latin America or who are Spanish speaking. Earmarked as part of a major regeneration project, Haringey Borough Council granted planning permission for the demolition of existing buildings and erection of mixed-use developments instead. Initially protestors were able to succeed in their claim that the council had infringed the Race Relations Act 1976 (as amended) in failing to pay due regard to the need to "promote equality of opportunity and good relations between persons of different racial groups" as required by section 71. This finding was even upheld by the Court of Appeal (*R (on the application of Janet Harris) v London Borough of Haringey* [2010] EWCA Civ 70).

Nevertheless, at Pueblito Paisa, once the procedural steps had been observed, the plans for the proposed regeneration continued. These included a compulsory purchase order to assemble the land for the project, which was submitted to the Secretary of State (who needs to approve it) in September 2016. At the time of writing – in early 2017 – the battle at Pueblito Paisa continues, but the legal mechanisms to facilitate change (including the compulsory purchase of leases as well as planning) are well underway. They have, however, created a discursive space.

3. *Conclusion*

This chapter has argued that legal mechanisms and practices facilitate – and can be used to resist – the changes that lie at the heart of gentrification. It is the first step in a larger project that must be collaborative (see Lees, Shin and Lopez-Morales, 2016, on international collaboration in gentrification studies), to collate the legal provisions and practices that are used to facilitate and resist gentrification around the world. Within gentrification studies we often focus on the same questions: unaffordable housing, retail conglomerates, internationally focused developers, minority cultural preservation or Airbnb. Comparative legal solutions, collected with sufficient detail, can provide a valuable resource to show sympathetic public officials, be they (Shadow) Secretaries of State, Mayors or councillors, that legal changes can be crafted to effect resistance, to limit change and strengthen rights to stay put. These might include voluntary rent controls, planning restrictions whether on viability, and transparency or neighbourhood restrictions on secondary residences. Reforms might include material restrictions (akin to Berlin's *Milieuschutz*) or a concerted effort to keep land ownership in public or communal hands wherever possible (for example, Rock House above).

There are significant constitutional differences. Legally, London cannot, for example, regulate its housing or land use rules in the way that Berlin, New York or Barcelona can. England is a country where land use is primarily regulated at the national scale (increasingly presuming or automatically granting permission and so giving the decision-making power to individual developers instead). There is nothing in this chapter about Wales, let along Scotland or Northern Ireland. Devolution has profound legal and practical effects. However, localised practices can change, particularly if arguments can be made that (for example) residential or commercial rent control or planning restrictions have facilitated "authenticity" in highly regarded cities elsewhere.

Being alive to legal differences matters if we are to seek solutions. We need to acknowledge the possibilities and some apparent limits of change. Even in Vancouver, with a Mayor deeply concerned with housing affordability and displacement, the introduction of a 15% tax on non-national property purchases is now subject to the approval of British Columbia Supreme Court, which will rule on a class-action suit from prospective foreign buyers. And yet, if we know where the legal difficulties lie, we can investigate whether there are soft spots, where can we challenge, what can we push? This is one purpose of legal work in gentrification studies.

Another key focus for legally-aware comparative gentrification research is to identify land ownership. As this chapter has illustrated, the landowner, either the freeholder or a (very) long leaseholder, has extraordinary power to set the agenda for their land and determine the look, feel, taste and smell of a city. In England, within the private sector, landowners can then sell or rent land to the highest bidder and even when land is publicly owned (for example by a local authority) the rules on land ownership, or how to buy and sell or rent, remain broadly same as for private owners (though there are human rights implications, some public law rules and possible requirements to consult) (Layard, 2016). More importantly, even though public landowners can act very quickly in redeveloping or gentrifying sites, procedural remedies can create space for discursive arguments about how public landowners should behave, drawing on histories and practices that are often site-specific. Public landowners are not necessarily more philanthropic or socially minded – as activists throughout London know well – but they can be open to debates about equality and access. It is this scope for different property practices that can be identified and developed through legal and political activism but first we need to keep asking: "who owns the land?" Can we see any contracts? Concepts of property and contract, public and private, emerge throughout international practices of regeneration, often replicated even if they are almost always jurisdictionally distinctive.

To continue to internationalise gentrification studies then, we must consider the legal. Jurisdictions differ but broad concepts – freeholds, leases, human rights, participation rights and forms of judicial review – are similar. The details matter: a German lease with security of tenure and regulated rents is a very different creature from an English assured shorthold tenancy. To identify how legal mechanisms and practices are facilitating – and can resist – gentrification, scholars need to engage in the details of legal research.

Analysts of global gentrification studies have noted the "trajectory" of gentrification beyond the usual suspects of "London, New York etc." (Lees, Shin and Lopez-Morales, 2016). There will be many reasons for the extension of gentrification practices (economic, political, cultural), yet the mechanisms used will often be similar. The use of the lease – particularly when there is no or limited rent regulation or security of tenure – is a key instrument in facilitating gentrification. Planning permission may be required for new development or change of use but if regulations do not impose requirements for affordable housing or retail, the planning system may facilitate – rather than prevent – gentrification. There is growing evidence that Anglo-American conceptual hegemony is being used – in primarily capitalist land use decisions – to produce gentrification across the globe (Lees, Shin, Lopez-Morales, 2016) This chapter suggests that these shared concepts and practices are often legal – freeholds, leases and licences as well as planning permissions – facilitate the replication of gentrification. The relative ease with which this can occur is illustrated by public sector projects, often in the name of regeneration (for example, as discussed here on the Heygate and Aylesbury housing estates). As this chapter has discussed, there are only limited procedural legal safeguards. Conversely, however, while private sector developers may operate more slowly they are under far less public scrutiny and can enrol greater claims (both legal as well as rhetorical) of commercial confidentiality.

Asking legal questions is crucial to understand how gentrification happens wherever it is taking place. It is so often the same legal mechanisms – leases, licences, planning permissions – as well as key legal absences – rent regulation, security of tenure or compulsory financial contributions to communities – that facilitate gentrification. Western concepts of property and land use have travelled extraordinarily well (Davies, 2007). As comparative gentrification studies illustrate, there are different ways of *doing* property and regeneration (including ethical landlordism, rent controls, security of tenure, state-led construction of affordable housing, community public spaces, social retail ventures, to name just a few) and we need to identify and publicise these. Roy has called for "a more contoured knowledge" of cities (Roy, 2009) and this applies to legal knowledge as well. We can – and should – look for legal concepts that act as alternatives to the standard Western incidents of property and planning practices to inform calls for change. As Lees, Shin and Lopez-Morales (2016, 226) argue: "We need to unpick 'the planet's gentrified mind', we

need to be counter-cultural again, to find radical ways and insights, to operate outside social assumptions, to generate social and urban change through contestation and the presentation of realistic alternatives". Legal analysis will be crucial in this task.

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